

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9865 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HUSAINKHAN KADARKHAN PATHAN

Versus

DISTRICT MAGISTRATE

Appearance:

MR SUNIL C PATEL for Petitioner

Mr MR ANAND, G.P., with Ms.Ami Yagnik, A.G.P.

for the Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 30/01/97

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India the petitioner-detenu Husainkhan Kadarkhan Pathan has brought under challenge the detention order dated 10th October 1996 rendered by the respondent No.1 u/s. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been carrying on criminal and anti-social activities of causing hurt to the innocent people with the aid of deadly weapons and extorting money from them. The detaining Authority has placed reliance on three offences of 1996 under Sections 143, 147, 148, 149, 323, 336, 337, 504, 506(2) I.P.Code, registered with Ankleshwar Police Stations, the last offence being of 20.6.1996. The particulars of such offences have been set out in the grounds of detention.

3. It has been submitted that it is not in dispute that the last mentioned case has been registered on 20.6.1996 and on the next day the petitioner was enlarged on bail. It is also not in dispute that the statement of the witnesses were recorded on 25.7.1996, but they lack particulars of any incident. They are quite general and vague in nature. The impugned order of detention has been passed on 10.10.1996.

4. It is on the aforesaid statements that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been stamped as a 'dangerous person' within the meaning of section 2(c) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds, inter-alia on the ground of delay as can be seen from the narration of facts and dates quoted above.

6. Although there is no Affidavit in Reply to the aforesaid ground of delay it has been submitted by Ms.Ami Yagnik, learned A.G.P. that the delay would not prejudice the petitioner particularly with reference to his right under Article 22(5) of the Constitution of India. This explanation of the learned A.G.P. cannot be accepted in view of the decision of the Honourable Supreme Court in the case of P.N.Paturkar v/s. S. Rama Murti, reported in AIR 1994 SC 656, which has been relied upon in support of the petitioner's cause. In that decision the reference has been made to an earlier decision of the Apex Court in the case of A.T.Abdul Rehman V/s. State of Kerala, reported in (1989) 4 SCC

741 : AIR 1990 SC 225). Following observations have been quoted :

"The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

In so far as the present case is concerned, the facts as noted above speak for themselves. The result is that the decision in P.N.Paturkar's case (supra) would be applicable to the facts of the present case.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of P.N.Paturkar (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu - Husainkhan Kadarkhan Pathan shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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